2026 WI 32

Supreme Court of Wisconsin

IN THE MATTER OF DISCIPLINARY PROCEEDINGS AGAINST
PATRICK J. RUPICH, ATTORNEY AT LAW

OFFICE OF LAWYER REGULATION,
Complainant,
v.
PATRICK J. RUPICH,
Respondent.

No. 2024AP1452-D
Decided September 18, 2026

ATTORNEY DISCIPLINARY PROCEEDING.

¶1 PER CURIAM. This case is before the court following referee Jean A. DiMotto's report recommending that Attorney Patrick J. Rupich's license to practice law be suspended for 60 days and that he be ordered to pay $13,000 in restitution to two former clients—A.G. ($3,000) and M.M. ($10,000). The Office of Lawyer Regulation (OLR) alleged that Attorney Rupich committed eight counts of professional misconduct in the course of his representation of A.G., M.M., and J.J. in three separate matters.[1] The allegations include: six separate counts of fee misconduct, involving violations of Supreme Court Rule (SCR) 20:1.5(a) (charging an

[1] At the time of the underlying misconduct, A.G. was known as A.H., and J.J. was known as J.V.W./J.W. This opinion will refer to them by their present initials.

unreasonable fee),[2] SCR 20:1.5(g)(2) (duties upon termination of representation),[3] and SCR 20:1.16(d) (failing to protect a client's interests by not returning unearned advanced fee payments upon termination of representation);[4] one count of lack of diligence in violation of SCR 20:1.3;[5] and one count of violating SCR 20:3.4(c) (knowingly disobeying an

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[2] SCR 20:1.5(a) states, in pertinent part, that "[a] lawyer shall not make an agreement for, charge, or collect an unreasonable fee . . . ."

[3] SCR 20:1.5(g)(2) provides:

> Upon termination of the representation, the lawyer shall deliver to the client in writing all of the following:
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> a. A final accounting, or an accounting from the date of the lawyer's most recent statement to the end of the representation, regarding the client's advanced fee payment.
>
> b. A refund of any unearned advanced fees and costs.
>
> c. Notice that, if the client disputes the amount of the fee and wants that dispute to be submitted to binding arbitration, the client must provide written notice of the dispute to the lawyer within 30 days of the mailing of the accounting.
>
> d. Notice that, if the lawyer is unable to resolve the dispute to the satisfaction of the client within 30 days after receiving notice of the dispute from the client, the lawyer shall submit the dispute to binding arbitration.

[4] SCR 20:1.16(d) provides, in pertinent part:

> Upon termination of representation, a lawyer shall take steps to the extent reasonably practicable to protect a client's interests, such as giving reasonable notice to the client, allowing time for employment of other counsel, surrendering papers and property to which the client is entitled and refunding any advance payment of fee or expense that has not been earned or incurred. . . .

[5] SCR 20:1.3 states that "[a] lawyer shall act with reasonable diligence and promptness in representing a client."

obligation under the rules of a tribunal).[6] The OLR alleged that Attorney Rupich charged unreasonable fees by entering into flat-fee agreements with two former clients in criminal matters, accounting for his time on an hourly basis in response to the OLR's inquiries, and claiming that the value of his work exceeded the flat-fee agreements. The OLR further alleged that Attorney Rupich refused to return unearned advanced fees paid to him upon termination of representation, failed to advise his clients as to their right to the return of unearned fees, and failed to advise them of their right to fee arbitration upon termination of representation. Finally, the OLR alleged that Attorney Rupich failed to diligently pursue one of his client's interests by repeatedly missing scheduled court hearings and that he failed to comply with an order of a tribunal requiring him to explain his absence at a scheduled court hearing. Attorney Rupich admitted all salient allegations in his answer to the OLR's complaint.

¶2 Neither party has filed an appeal; thus, the court reviews this matter pursuant to SCR 22.17(2).[7] We conclude that the OLR proved by clear, satisfactory, and convincing evidence that Attorney Rupich violated SCR 20:1.5(g)(2), SCR 20:1.16(d), SCR 20:1.3, and SCR 20:3.4(c), as alleged in the OLR's complaint. For the reasons explained below, we conclude that the record does not support the OLR's allegations that Attorney Rupich violated SCR 20:1.5(a) because there is no evidence that Attorney Rupich actually charged his clients in excess of the flat-fee agreements. We further conclude that the appropriate discipline in this case for the remaining violations is a three-month suspension of Attorney Rupich's license to practice law. Finally, despite the lack of evidence as to what amount of the flat fees charged by Attorney Rupich were unearned, we conclude that full

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[6] SCR 20:3.4(c) provides that "[a] lawyer shall not . . . knowingly disobey an obligation under the rules of a tribunal, except for an open refusal based on an assertion that no valid obligation exists."

[7] SCR 22.17(2) provides:

> If no appeal is filed timely, the supreme court shall review the referee's report; adopt, reject or modify the referee's findings and conclusions or remand the matter to the referee for additional findings; and determine and impose appropriate discipline. The court, on its own motion, may order the parties to file briefs in the matter.

restitution is appropriate, based on the OLR's representation that Attorney Rupich has fully refunded the advanced fees paid by A.G. and M.M.

Factual Background and Procedural History

¶3 Attorney Rupich was admitted to the practice of law in Wisconsin on May 5, 2001. Attorney Rupich has a history of two prior private reprimands. In 2007, Attorney Rupich received a private reprimand for mishandling an opposing party's confidential medical records and failing to abide by a court order in violation of SCR 20:3.2[8] and SCR 20:3.4(c). Attorney Rupich was privately reprimanded again in 2013 for two violations of SCR 20:8.4(b) for third-offense operating while intoxicated (OWI) and bailjumping convictions.

Representation of A.G.

¶4 In 2019, Attorney Rupich agreed to represent A.G. in a Racine County criminal matter (OWI-fourth offense). A.G. signed an engagement letter, agreeing to pay Attorney Rupich $3,000 as an advanced flat fee, which the agreement stated "shall cover any motions, a guilty plea and sentencing; or a dismissal of charges." The agreement required payment of an additional $3,000 if A.G. elected to proceed with a jury trial. However, the engagement letter also indicated that despite being a flat-fee agreement, Attorney Rupich would "keep[ ] track of the time spent on [the] case at the rate of $333.33 per hour for all work."

¶5 After A.G. paid the advanced fee, Attorney Rupich "worked regularly on the case," including requesting discovery, gathering documents, communicating status updates, and attempting to negotiate a plea agreement. Attorney Rupich was unable to appear for the first status conference on the case in January 2021 due to illness, which he communicated to the court and A.G. in advance. The day prior to the rescheduled conference date, Attorney Rupich informed the court that he would be unable to attend due to a motor vehicle accident that left him without transportation. The court permitted Attorney Rupich to appear via telephone. Prior to the scheduled conference, Attorney Rupich continued

[8] SCR 20:3.2 states that "[a] lawyer shall make reasonable efforts to expedite litigation consistent with the interests of the client."

to negotiate a plea agreement, but the prosecutor requested additional information concerning A.G.'s rehabilitation efforts. Due to the ongoing negotiations, Attorney Rupich requested an additional status conference date, which was set for April 22, 2022. At this point, A.G. expressed frustration that Attorney Rupich was not doing enough to advocate on her behalf, expressed displeasure with the State's most recent plea offer, and wanted Attorney Rupich to provide additional information to the prosecutor and court about her rehabilitation efforts.

¶6 Attorney Rupich failed to appear for the April 22, 2022 status conference, without notice to the court or A.G., and the conference was rescheduled to June 13, 2022. A.G. immediately texted Attorney Rupich that his representation was "deemed unfit in court today" and fired him.

¶7 Upon A.G.'s termination of Attorney Rupich's representation, he had not filed any motions on behalf of A.G. or secured a plea agreement. Nonetheless, he did not refund any of A.G.'s $3,000 flat fee and failed to provide her with a final accounting, notice of how to dispute the fee, or information concerning fee arbitration.

¶8 Attorney Rupich did not inform the court or opposing counsel that A.G. had terminated his representation until June 10, 2022—three days before the adjourned status conference. In a letter sent to the court, Attorney Rupich advised that he had mis-calendared the previous court appearance, was no longer representing A.G., and was unable to appear in person for the upcoming status conference, but could appear by phone. However, Attorney Rupich did not appear by phone at the adjourned status conference, and did not file a motion to withdraw, claiming he was unable to do so as he was on medical leave. The court subsequently removed Attorney Rupich as counsel for A.G. and granted A.G.'s petition for appointment of new counsel.

¶9 A.G. filed a grievance with the OLR, and the OLR requested a response by July 19, 2022. Attorney Rupich did not respond. In response to the OLR's second request for a response, Attorney Rupich asserted that he did not respond to the first request because he was on medical leave and that the OLR should have received an automated reply informing it of this fact. However, the OLR received no such reply. Attorney Rupich requested additional time to respond, and the OLR set a new deadline of August 24, 2022. Attorney Rupich did not respond by that time. The OLR sent a reminder to Attorney Rupich that his response was overdue, and three

weeks later, he again requested additional time due to medical issues and moving residences. The OLR requested a response by September 26, 2022. Attorney Rupich did not meet that deadline either but filed an incomplete response on October 5, 2022, which failed to address why he did not appear in court at the April 22, 2022 status conference. Attorney Rupich later claimed that he was busy moving residences. The OLR requested that Attorney Rupich supplement his response with the missing information and previously requested documents by November 11, 2022. Despite being provided with two extensions, Attorney Rupich did not supplement his response.

¶10 The OLR then referred A.G.'s grievance for a formal investigation. On June 7, 2023, the OLR directed that Attorney Rupich submit a written response to A.G.'s grievance on or before June 30, 2023. *See* SCR 22.03(2).[9] Attorney Rupich failed to do so or request an extension of time. He later asserted that he was again moving residences during this time period. The OLR then personally served Attorney Rupich with a letter directing a written response within 20 days of service and warning that his law license would be automatically suspended if he did not comply. SCR 22.03(4)(a).[10] Attorney Rupich provided an incomplete response that did not address all of the issues raised in A.G.'s grievance, in particular, his failure to comply with SCR 20:1.5(g)(2) upon termination of representation. The OLR therefore directed Attorney Rupich to submit a supplemental response by August 15, 2023, addressing this issue and the language in his fee agreement relating to keeping track of time at an hourly rate, and to provide a final accounting consistent with the flat-fee terms of his agreement with A.G.

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[9] SCR 22.03(2) provides, in pertinent part: "The respondent shall fully and fairly disclose all facts and circumstances pertaining to the alleged misconduct within 20 days after being served by ordinary mail a request for a written response."

[10] SCR 22.03(4)(a) provides, in relevant part, that "[i]f a respondent fails fully and fairly to disclose all facts and circumstances pertaining to the alleged misconduct within the deadline established . . . [the OLR] shall notify respondent by personal service that respondent's license to practice law will be automatically suspended unless, within 20 days after receiving such personal service," the respondent cures said deficiencies.

¶11 Attorney Rupich retained counsel, who ultimately provided a supplemental response. Attorney Rupich's supplemental response acknowledged that he had not provided a final accounting to A.G., as required by SCR 20:1.5(g)(2), but agreed to do so in the near future. He further stated that the language in his fee agreement concerning keeping track of time at an hourly rate would be changed in future agreements. Attorney Rupich estimated that he worked approximately 11.6 hours on A.G.'s case, which, if billed at the rate of $333.33 an hour would equate to a fee of $3,866.63, such that no refund was owed. When Attorney Rupich eventually provided a final accounting, it indicated that he worked 34 hours on A.G.'s case, for a total fee of $11,333.22.

¶12 As a result of the above conduct, the OLR alleged that Attorney Rupich violated SCR 20:1.5(g)(2) by failing to provide a final accounting to A.G. upon termination of his representation and failing to provide notice as to how A.G. could dispute the fee and the availability of fee arbitration (Count 1). The OLR also alleged that Attorney Rupich violated SCR 20:1.5(a) by charging a fee of $11,333.22 based on an hourly rate when the agreed upon fee was a $3,000 flat fee (Count 2). Finally, the OLR alleged that Attorney Rupich violated SCR 20:1.16(d) by failing to refund unearned portions of the advanced flat fee, which was to cover "any motions, a guilty plea and sentencing," in his representation of A.G., when Attorney Rupich's representation was terminated before accomplishing any of those items (Count 3).[11]

Representation of M.M.

¶13 In August 2021, Attorney Rupich was hired to represent M.M. to defend charges in a felony case, arising from her job as a correctional officer. M.M. paid Attorney Rupich an advanced flat fee of $10,000, pursuant to the terms of an August 27, 2021 engagement letter. Similar to the engagement letter signed by A.G., M.M.'s letter indicated: "This flat fee shall cover any motions, a guilty plea and sentencing; or a dismissal of charges." However, the agreement contained a provision stating: "This is a

[11] The OLR did not allege any misconduct related to Attorney Rupich's repeated delays and incomplete responses to the OLR during its investigation.

flat rate agreement, but [Attorney Rupich] keeps track of the time spent on your case at the rate of $333.33 per hour for all work."[12]

¶14 The court scheduled a plea hearing in M.M.'s case for December 21, 2021. Attorney Rupich failed to attend, resulting in it being adjourned. M.M. terminated Attorney Rupich's representation four months later due to lack of communication. At this juncture, Attorney Rupich had not secured a plea agreement, had not filed any motions on M.M.'s behalf, and M.M. had not been sentenced. Nonetheless, Attorney Rupich did not return any of the $10,000 advanced flat fee to M.M. Likewise, Attorney Rupich did not deliver M.M. a final accounting, notice on how to dispute the fee, or notice of the availability of fee arbitration. M.M., via successor counsel, ultimately resolved her criminal case with a deferred prosecution agreement.

¶15 M.M. filed a grievance with the OLR in November 2022, alleging that Attorney Rupich failed to provide her a refund or a final accounting of her funds. The OLR requested a response by February 23, 2023. Attorney Rupich did not respond, and the OLR referred the matter for formal investigation. On June 7, 2023, the OLR sent Attorney Rupich a letter directing him to file a written response to M.M.'s grievance by June 30, 2023, as required by SCR 22.03(2). Attorney Rupich did not provide a response by that time or request an extension of time.

¶16 On July 6, 2023, the OLR arranged for a process server to serve another letter informing Attorney Rupich that he was required to provide a response to the grievance within 20 days of service or his license would be suspended under SCR 22.03(4)(a). The process server was unable to effect personal service of the letter, despite four attempts to do so. On August 10, 2023, this court granted the OLR's motion to serve the letter by certified mail based on the OLR's belief that Attorney Rupich was avoiding personal service. The OLR did so.

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[12] We note that M.M.'s engagement letter was introduced as an exhibit at the disciplinary hearing (OLR Ex. 4), but the exhibit is missing the page containing the language quoted above. However, the OLR's complaint specifically quotes the same language as being part of M.M.'s engagement letter. In his answer, Attorney Rupich admitted this allegation was true. Therefore, we accept this fact as established.

¶17 On August 15, 2023, Attorney Rupich retained counsel. The OLR sent materials relating to M.M.'s grievance to counsel and advised that the deadline for Attorney Rupich to submit a written response was August 31, 2023. Attorney Rupich submitted a written response after the close of business on August 31, 2023. Attorney Rupich's response acknowledged that he had not provided a final accounting as required by SCR 20:1.5(g)(2), but indicated that he would do so by September 11, 2023. On September 12, 2023, Attorney Rupich provided a final accounting of his fees, in which he indicated that he worked 62.4 hours on M.M.'s case for a total fee of $20,799.99.

¶18 As a result of these actions, the OLR charged Attorney Rupich with violating SCR 20:1.5(g)(2) for failing to provide a final accounting to M.M., failure to refund the $10,000 advanced flat fee, and failure to provide notice as to how to dispute the fee or the availability of fee arbitration (Count 4). The OLR also alleged that Attorney Rupich violated SCR 20:1.5(a) by charging M.M. a fee of $20,799.99 when the agreed-upon fee was a flat fee of $10,000 (Count 5). Finally, the OLR alleged that Attorney Rupich violated SCR 20:1.16(d) by failing to refund M.M. the advanced flat fee when Attorney Rupich did not accomplish any of the items set forth in the engagement letter (Count 6).[13]

Representation of J.J.

¶19 On December 21, 2021, the State Public Defender's Office (SPD) appointed Attorney Rupich to represent J.J. in two criminal cases in Outagamie County in which she was being sentenced after her probation was revoked. The two cases were consolidated for sentencing-after-revocation purposes and set for a sentencing hearing on April 6, 2022. Attorney Rupich was entered as counsel of record for J.J. on both cases on March 11, 2022.

¶20 Attorney Rupich did not appear for the April 6, 2022 hearing. A judicial assistant emailed Attorney Rupich to inquire as to why he was not present, and he responded that he was in another hearing and "was not consulted on this date for [J.J.]." Attorney Rupich acknowledged that he

[13] Again, the OLR did not charge Attorney Rupich with any misconduct relating to his actions and delayed responses during the OLR's investigation.

had handled J.J.'s revocation, but indicated that the SPD had delayed in appointing him for purposes of sentencing-after-revocation and "no one knew I was appointed as her [sentencing-after-revocation] attorney and I was not consulted on the original court date." The court rescheduled the hearing to April 28, 2022—a date chosen by Attorney Rupich.

¶21 Attorney Rupich's statement that he was supposed to be appointed earlier and that "no one knew" he was appointed to represent J.J. for sentencing-after-revocation "was inconsistent with the SPD's appointment order" and court entries in which Attorney Rupich was entered as counsel-of-record. Additionally, local rules for Outagamie County Circuit Court require that counsel file a notice of retainer in cases in which counsel is appointed by the SPD, in order to receive court-generated notices. Attorney Rupich did not file a notice of retainer with the court.

¶22 Attorney Rupich failed to appear at the April 28, 2022 sentencing hearing. The court rescheduled the hearing for May 6, 2022, and mailed notice of the hearing to the address Attorney Rupich kept on file with the State Bar of Wisconsin.[14] The court also ordered Attorney Rupich to meet with his client and provide a written explanation of his absence prior to the May 6 hearing. Attorney Rupich failed to attend the May 6 hearing and failed to provide the court with a written explanation for his failure to appear at the April 28 hearing. On May 9, 2022, the court removed Attorney Rupich as counsel for J.J. due to his failure to appear for the three scheduled hearings. The removal order further indicated that Attorney Rupich had not contacted J.J. as the court had directed and that J.J. "indicated she had not heard from Attorney Rupich and she had been attempting to call his office without success."

¶23 The court sent a copy of its removal order to the OLR, which initiated an inquiry. Attorney Rupich failed to respond to several requests from the OLR to provide information in response to the inquiry and missed several deadlines. However, he eventually provided a response on October 3, 2022, stating that his failure to appear was due to not recognizing J.W. by the name J.J., which caused him to not file a notice of retainer, resulting in

[14] This letter was also entered into the court record and copied to the SPD's office.

him not receiving notices of court hearing dates. Attorney Rupich also denied receiving the court's letter directing him to provide a written explanation for his absence at the April 28 hearing. Attorney Rupich's response to the OLR's inquiries "contained several statements inconsistent with the court record and his email exchange with the [court's] judicial assistant." The OLR therefore referred the matter to formal investigation.

¶24 On June 7, 2023, the OLR directed Attorney Rupich to provide a written response, along with any supporting documentation, to substantiate the assertions in his prior response and to address its inconsistencies with the court's record. He was directed to do so by June 30, 2023. Attorney Rupich did not respond by that deadline. On July 6, 2023, the OLR arranged for a process server to personally serve Attorney Rupich with a notice under SCR 22.03(4) that unless he provided a written response within 20 days after service, his license to practice law would be automatically suspended.

¶25 Despite four attempts, the process server could not effect personal service. As a result, on August 10, 2023, this court granted the OLR's motion to serve notice via certified mail, based on the OLR's belief that Attorney Rupich was avoiding service. The OLR sent notice via certified mail on August 11, 2023, with a deadline to respond by August 31, 2023. On August 15, 2023, Attorney Rupich retained counsel, and the OLR provided copies of the material relating to inquiry and informed counsel of the August 31, 2023 deadline.

¶26 Attorney Rupich submitted a written response after the close of business on August 31, 2023. Attorney Rupich acknowledged that it was his responsibility to be aware of court hearings and indicated that he failed to "opt-in" to J.J.'s cases via CCAP's electronic filing system and thus was not provided notice of the court hearings. Attorney Rupich did not explain why he failed to "opt-in" as an electronic filer.

¶27 As a result of these actions, the OLR alleged that Attorney Rupich violated SCR 20:1.3 by failing to opt-in to the electronic filing system, failing to track the scheduling of hearings, and failing to appear on J.J.'s behalf at multiple hearings (Count 7). Additionally, the OLR alleged that Attorney Rupich violated SCR 20:3.4(c) by failing to comply with the

court's directive to explain, in writing, his failure to appear at J.J.'s hearings (Count 8).[15]

¶28 Attorney Rupich answered the complaint and admitted all of the allegations except two.[16] He asserted 23 affirmative defenses, which provided additional facts and alleged that Attorney Rupich was suffering from a medical condition at the time of the misconduct.

¶29 At the subsequent disciplinary hearing, A.G. expressed how Attorney Rupich's conduct was "frustrating and heartbreaking," and relayed how the judge and district attorney were angry and upset at her due to his failure to attend the April 22, 2022 status conference. She further stated that she "wasted [the] money" that she paid Attorney Rupich. She described how Attorney Rupich made her "look like a fool" and expressed frustration with the "several different strange reasons" he gave for his failure to appear in person for numerous court dates and the fact that he lost documents she provided to him. Similarly, M.M. described her experience with Attorney Rupich as "negative" and indicated that she "didn't get the respect [she] deserved for having to pay him the money that I paid him." Both clients testified that they believed Attorney Rupich had not "provided any benefit" to their cases.

¶30 For his part, Attorney Rupich attempted to explain his misconduct as a result of his health condition and "self-induced stress by carrying a heavy caseload outside of Milwaukee County" and "burning the candle at both ends." He admitted that his health condition "[did] not affect his mental functioning." Attorney Rupich also indicated that he had significantly cut back and limited his practice of law.

¶31 The referee found that all of the facts alleged in the OLR's complaint had been established, either through Attorney Rupich's admissions or the testimony presented at the disciplinary hearing. Further, the referee concluded that "[t]here is no question in this matter that Atty.

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[15] Again, the OLR did not charge Attorney Rupich with any counts of misconduct relating to his conduct during the OLR's investigation.

[16] The referee concluded that testimony at the hearing substantiated these remaining two allegations. Their substance is not material to our analysis.

Patrick J. Rupich violated the Rules of Professional Conduct as cited in each of the eight counts . . . . Not only has he admitted the factual bases for them, he has also has admitted each of the counts of misconduct."

¶32 The referee further indicated that the "elephant in the room" was "whether any of Atty. Rupich's misconduct is mitigated by his [health issues]." The referee concluded it was not. The referee explained that there was no expert testimony linking Attorney Rupich's medical condition to his professional misconduct and that Attorney Rupich admitted that his medical condition did not affect his cognitive abilities, nor did he assert his health concerns were the reason for any of the hearings he missed. "Rather, he offered reasons such as that he was in a car accident and therefore had no transportation, that he had fallen asleep because he had been at the hospital so long with his mother, that he had mis-calendared the date, that he had not opted in to the CCAP efiling function, or that he was moving . . . ." Therefore, the referee found that Attorney Rupich had not established a causal connection between his health condition and the misconduct.

¶33 However, the referee concluded that several other mitigating factors were present in this case, including: Attorney Rupich's testimony at the hearing was "truthful and forthright"; Attorney Rupich admitted to all material allegations in the complaint and admitted to all charged counts of misconduct; and Attorney Rupich had scaled back his law practice and found a way to practice law that was not "as stressful and physically taxing" as it was when he committed the misconduct, thus providing "evidence of his rehabilitation." The referee also concluded that several aggravating factors were present, including: Attorney Rupich's repeated failure to cooperative with the OLR, particularly since he was not charged with failure to cooperate; the number of counts of misconduct; the fact that he was not charged with lack of diligence relating to his representation of A.G. or M.M.; his pattern of failing to appear in court; his "dishonest pattern of refusing to refund unearned fees"; his "indifference to restitution"; his substantial experience in the practice of law; and the negative impact of Attorney Rupich's misconduct on his clients. The referee concluded that Attorney Rupich's prior private reprimands were too remote from and dissimilar to the current allegations to be relevant.

¶34 Attorney Rupich sought a public reprimand, while the OLR sought a 60-day suspension. The referee indicated that the balance of aggravating and mitigating factors "call[s] for discipline beyond the

reprimand stage" and agreed with the OLR that a 60-day suspension was appropriate, although the referee indicated that "[a]rguably, . . . Atty. Rupich could justly receive a longer suspension than 60 days[.]" The referee explained that a 60-day suspension was appropriate based on: Attorney Rupich's admission of the allegations against him; his "forthright, honest testimony"; Attorney Rupich's efforts to scale back his law practice; and "my accompanying recommendation for full restitution of the flat-rate fees to two of his clients."

¶35 Following the submission of this matter to the court, we asked the parties to address several issues relating to the OLR's theory of liability relating to the two counts in the complaint alleging violations of SCR 20:1.5(a) (charging an unreasonable fee), what portion of the flat fees paid by A.G. and M.M. were unearned, and how to calculate the appropriate amount of restitution owed, if any. The OLR provided a response to these inquiries (discussed below), but the court received no response from Attorney Rupich. Of note at this juncture, the OLR reported that based on the referee's recommendation of payment of full restitution, Attorney Rupich refunded the entire amount of the advanced flat fees paid by A.G. and M.M.

Analysis

¶36 No appeal was filed, so we review this matter pursuant to SCR 22.17(2). We will affirm the referee's findings of fact unless they are clearly erroneous. *In re Disciplinary Proceedings Against Alfredson*, 2019 WI 17, ¶27, 385 Wis. 2d 565, 923 N.W.2d 869. We review conclusions of law de novo. *Id.* The court may impose whatever sanction it deems appropriate, regardless of the referee's recommendation. *Id.* "The [OLR] has the burden of demonstrating by clear, satisfactory[,] and convincing evidence that the respondent has engaged in the misconduct" alleged. SCR 22.16(5).

¶37 Here, Attorney Rupich admitted all material facts in the complaint, as well as the allegations of misconduct for all eight of the charged counts. Ordinarily, this would be sufficient to support the referee's findings of fact and conclusion that Attorney Rupich committed all eight counts of misconduct as alleged. *In re Disciplinary Proceedings Against Lemanski*, 2017 WI 5, ¶22, 373 Wis. 2d 65, 892 N.W.2d 305. However, our review of the record relating to the two counts alleging violations of SCR 20:1.5(a), as well as the OLR's response to the court's questions concerning those counts, raises doubts regarding whether the facts alleged by the OLR

actually establish that Attorney Rupich violated SCR 20:1.5(a), which prohibits an attorney from, inter alia, "charg[ing] an unreasonable fee[.]"[17]

¶38 In Count 2, the OLR alleged that as to A.G., Attorney Rupich violated SCR 20:1.5(a) by "charging a fee of $11,333.32 based on an hourly rate, when the agreed upon fee was a flat $3,000." This allegation was premised on the accounting Attorney Rupich provided, through counsel, in response to the OLR's investigatory demands. Likewise, in Count 5, the OLR alleged that as to M.M., Attorney Rupich violated SCR 20:1.5(a) by "charging a fee of $20,799.99 based upon an hourly rate when the agreed upon fee was a flat $10,000[.]" Again, this allegation was premised on the accounting Attorney Rupich provided, through counsel, in response to the OLR's investigatory demands. In its post-hearing brief to the referee, the OLR was unambiguous that the alleged SCR 20:1.5(a) violations were based on the accounting Attorney Rupich provided to the OLR: "Attorney Rupich's reporting to OLR of thousands of dollars of additional hourly legal fees for clients who had agreed to pay only preset flat fees constitutes misconduct." That is, the OLR asserted that simply using an hourly rate calculation to account for his fees to the OLR was a per se violation of SCR 20:1.5(a).[18]

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[17] The common and ordinary definition of to "charge" in this context is "to fix or ask as fee or payment," "to ask payment of (a person)," or "to impose a financial burden on." *Meriam-Webster.com Dictionary*, https://https://www.merriam-webster.com/dictionary/charge (last visited August 25, 2026).

[18] In both its post-hearing brief and in response to this court's questions, the OLR anchored its theory of liability on the definition of "flat fee" under SCR 20:1.0(dm), which states that "a flat fee . . . may not be billed against at an hourly rate." The OLR explained that, in its view, this definition meant that Attorney Rupich "could not rely on his hourly rate to calculate the value of his flat-fee services." The OLR argued to the referee that "Wisconsin's ethics rules prohibit attorneys from using their regular hourly rate to determine the amount earned under flat-fee agreements." In response to questions from this court, the OLR reiterated this position, but did not cite any legal authority for its interpretation of SCR 20:1.0(dm) beyond the text of the rule. In other words, the OLR seems to suggest when a flat-fee agreement is terminated prematurely, an attorney cannot attempt to establish the value of work performed by reference to the hours worked

¶39 However, at no point in its complaint or post-hearing briefs did the OLR allege that Attorney Rupich actually demanded payment from A.G. or M.M. of amounts in excess of their flat-fee agreements or that he ever informed either client that they owed an amount in excess of their flat-fee agreements. After the record of the referee proceedings was transmitted to this court, we asked the OLR, "Did Attorney Rupich ever bill or submit an invoice to A.G. or M.M. indicating an amount owed that was higher than their flat-fee agreements?" The OLR responded that it possessed "no evidence that Rupich actually submitted those invoices to his clients." Notably, the accounting that Attorney Rupich provided to the OLR is not part of the record, and A.G., M.M., and Attorney Rupich all testified that he never provided them with a final accounting after the termination of their representation. The OLR did not question Attorney Rupich at the disciplinary hearing about the accountings he provided to the OLR concerning A.G. and M.M. And at no point in Attorney Rupich's testimony did he assert that either client owed him additional funds in excess of the amounts paid under their advanced flat-fee agreements.

¶40 The referee's report is also confusing on this point. The report indicates that Attorney Rupich "asserted no refund was owed based on an hourly calculation of his fee." However, at another point, the report states: "Atty. Rupich indicated to OLR during its investigation that based on an

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and the attorney's normal hourly rate because doing so would constitute "bill[ing] against an hourly rate."

We note that the OLR's interpretation seems to conflict with past decisions from this court in which the OLR has argued, and this court has seemingly agreed, that in cases where there is a dispute as to the value of work performed under a flat-fee agreement, an attorney's usual hourly rate multiplied by the number of hours worked on a matter may be some indication of the value of the work performed. *See In re Disciplinary Proceedings Against Boyd*, 2010 WI 41, ¶¶27-28, 324 Wis. 2d 688, 782 N.W.2d 718; *In re Disciplinary Proceedings Against Din*, No. 2012AP2695–D, OLR Resp. Br. at 6-8 (July 9, 2014). However, given the absence of adversarial briefing on this issue in the present case, as well as the lack of evidence that Attorney Rupich actually charged or billed either A.G. or M.M. for an amount in excess of their flat-fee agreements, it is unnecessary for this court to determine whether the OLR's interpretation of SCR 20:1.0(dm) as a basis for liability under SCR 20:1.5(a) is correct.

hourly fee calculation, [A.G.] owed him a total of $11,333.22 and [M.M.] owed him a total of $20,799.99."

¶41 The bottom line is that although the OLR's complaint alleges, and Attorney Rupich admitted in his answer, that he claimed to the OLR to have performed work that he valued in excess of his flat-fee agreements with A.G. and M.M. using an hourly rate, there is no evidence that Attorney Rupich ever billed, demanded, or collected an amount from either client in excess of the amounts they paid under their advanced flat-fee agreements. Thus, the referee's findings that Attorney Rupich "charg[ed] a fee" to A.G. and M.M. in excess of their flat-fee agreements, as alleged in Counts 2 and 5 of the complaint, is clearly erroneous based on the record before the court. *Royster-Clark, Inc. v. Olsen's Mill, Inc.*, 2006 WI 46, ¶12, 290 Wis. 2d 264, 714 N.W.2d 530 (factual findings are not clearly erroneous "as long as the evidence would permit a reasonable person to make the same finding") (quoted source omitted).[19] Therefore, we conclude that the OLR did not prove by clear, satisfactory, and convincing evidence that Attorney Rupich violated SCR 20:1.5(a), as alleged in Counts 2 and 5 of the complaint. *See* SCR 22.16(5). Accordingly, we dismiss those charges.

¶42 In all other respects, we determine that the referee's findings of fact are supported by the record and not clearly erroneous. Likewise, we conclude that the record supports the conclusion that Attorney Rupich violated the other rules of professional conduct as alleged in the complaint.

¶43 As to Counts 1 and 4, it is undisputed that Attorney Rupich failed to provide a final accounting to A.G. and M.M. upon their termination of his representation, as required by SCR 20:1.5(g)(2). These charges are supported by clear, satisfactory, and convincing evidence.

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[19] Alternatively, to the extent that the referee's proposed conclusion that Attorney Rupich violated SCR 20:1.5(a) is based upon the legal supposition that the accountings Attorney Rupich provided to the OLR themselves constitute a "charge" to the client, neither the referee nor the OLR has cited to any authority for such a proposition of law. And while Attorney Rupich arguably conceded the point by admitting to the underlying violations in Counts 2 and 5, "[a] party's concession of law does not bind the court." *Bergmann v. McCaughtry*, 211 Wis. 2d 1, 7, 564 N.W.2d 712 (1997).

¶44 Counts 3 and 6 alleged that Attorney Rupich violated SCR 20:1.16(d) by failing to return unearned portions of the advanced flat-fee payments made by A.G. and M.M. As indicated above, Attorney Rupich's flat-fee agreements with both clients covered "any motions, a guilty plea and sentencing; or a dismissal of charges." It is undisputed that as to both clients, Attorney Rupich did not file any motions, did not negotiate successful plea agreements, did not secure a dismissal of charges, and did not represent either client at sentencing. Thus, as to both A.G. and M.M., it is undisputed that at least *some* portion of the advanced flat fees paid by Attorney Rupich's clients were unearned. *See* SCR 20:1.0(dm) ("'Flat fee' denotes a fixed amount paid to a lawyer for specific, agreed-upon services, or for a fixed, agreed-upon stage in a representation, regardless of the time required of the lawyer to perform the service or reach the agreed-upon stage in the representation").[20]

¶45 As to the J.J. matter, the record supports the referee's conclusion that Attorney Rupich violated SCR 20:1.3 (lack of diligence) by failing to "opt-in" as an electronic filer, failing to track the scheduling of hearings, and failing to appear at multiple hearings for J.J., as alleged in Count 7. Finally, it is undisputed that Attorney Rupich never explained his absences from said hearings in writing, as directed by the court, thus violating SCR 20:1.3, as alleged in Count 8.

¶46 We next determine the appropriate level of discipline in this case. The relevant factors for imposing discipline are "[t]he seriousness, nature, and extent of the misconduct; the level of discipline needed to protect the public; the need to impress upon the attorney the seriousness of the misconduct; and the need to deter other attorneys from similar misconduct." *In re Disciplinary Proceedings Against Zenor*, 2021 WI 77, ¶10, 399 Wis. 2d 326, 964 N.W.2d 775. We also examine relevant aggravating[21]

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[20] Because it is undisputed that Attorney Rupich did not accomplish *any* of the objectives set forth in his flat-fee agreements with A.G. and M.M., it is unnecessary for the court to discuss the proper methodology for calculating the amount of an advanced flat fee that remains "unearned" when an attorney's representation under an advanced flat-fee agreement is terminated before the objectives of representation are accomplished.

[21] ABA Standards § 9.22(a)-(k) sets forth the following aggravating factors: prior discipline; dishonest or selfish motive; pattern of misconduct; multiple

and mitigating[22] factors, as set forth in the ABA Standards for Imposing Lawyer Sanctions (ABA Standards).

¶47 The referee recommended the OLR's proposed sanction of a 60-day suspension. Even though we have concluded that there was no basis for two of the eight counts charged by the referee, we nonetheless conclude that a slightly longer suspension is required based on the facts of this case.

¶48 The conduct in this case is serious. Attorney Rupich failed to undertake his duties to A.G. and M.M. after they terminated his representation, as required by SCR 20:1.5(g)(2). After failing to advance the interests of A.G. and M.M. and failing to accomplish any of the goals for the representations that were set forth in his fee agreements, Attorney Rupich initially kept the entirety of the flat fees paid by A.G. and M.M., contrary to SCR 20:1.16(d). And, as to J.J., Attorney Rupich: failed to register as an electronic filer in her case; repeatedly missed court hearings, including a hearing that was selected by Attorney Rupich to accommodate his schedule after failing to appear at a previous hearing; and failed to comply with a court order instructing him to explain his absence in writing, thus violating SCR 20:1.3 and SCR 20:3.4(c). Attorney Rupich also admitted to missing court hearings on behalf of A.G. and M.M. without notice or explanation. Additionally, although the OLR did not separately charge Attorney Rupich with failure to cooperate during its investigations of the underlying grievances, the facts admitted by Attorney Rupich in his answer to the complaint indicate that initially he was less than celeritous or forthright. At

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offenses; bad faith obstruction of the disciplinary proceeding by intentionally failing to comply with rules or orders of the disciplinary agency; providing false evidence during the disciplinary process; refusal to acknowledge wrongful nature of conduct; the vulnerability of victims; substantial experience in practicing law; indifference to making restitution; and illegal conduct.

[22] ABA Standards § 9.32(a)-(m) sets forth the following mitigating factors: lack of a prior discipline; lack of a dishonest or selfish motive; personal or emotional problems; timely payment of restitution or other efforts to rectify the consequences of the misconduct; cooperation and full disclosure to the disciplinary board and in the proceedings; lack of experience in the practice of law; good character or reputation; physical disability; mental disability or chemical dependency; delay in the proceedings; imposition of other sanctions; remorse; and remoteness of prior offenses.

a minimum, the number and character of the violations indicate that a sanction harsher than a mere public reprimand is needed in this case.

¶49 The referee's report cited two cases in its sanctions analysis—*In re Disciplinary Proceedings Against Mross*, 2013 WI 44, 347 Wis. 2d 220, 830 N.W.2d 640 and *In re Disciplinary Proceedings Against Christnot*, 2004 WI 120, 275 Wis. 2d 289, 685 N.W.2d 788. *Mross* involved violations of SCR 20:1.3 (diligence), SCR 20:4(a)(2)-(3) (failure to consult with clients about the means of accomplishing the objectives of representation and status of the matter), and SCR 20:1.5(b)(1) (requiring written fee agreements), in two matters. In the first, Attorney Mross represented clients in foreclosure and bankruptcy proceedings. Attorney Mross failed to remind his clients to complete the requisite financial management course and therefore failed to timely file the course completion certification. The court closed the clients' case as a result, and Attorney Mross failed to file a motion to reopen the proceeding. In the second matter, Attorney Mross failed to file necessary documents, failed to appear at a hearing, and failed to provide a written fee agreement. The court agreed with the referee's recommendation to impose a 60-day suspension in large part due to the fact that Attorney Mross fully refunded the fee paid by one of the clients. *In re Mross*, 347 Wis. 2d 220, ¶31.

¶50 In *Christnot*, a default case due to failure to answer, the attorney was charged with violations of SCR 20:1.3 (lack of diligence), SCR 20:1.4(a) (failing to keep a client reasonably informed), SCR 20:1.16(d) (failing to return unearned portions of fees), and SCR 21.15(4) (failure to respond to OLR investigation) involving two clients. In the first matter, Attorney Christnot failed to prepare a qualified domestic relations order, failed to refund an unearned portion of a retainer, failed to communicate with the client, and did not respond to the OLR's inquiries. In the second matter, Attorney Christnot failed to respond to communications from her client and failed to respond to the OLR's investigation. This court agreed with the referee's recommendation to suspend the attorney's license for six months as a result of this misconduct. *In re Christnot*, 275 Wis. 2d 289, ¶12.

¶51 All things considered, this case seems to fall somewhere between *Mross* and *Christnot*, but both indicate that a suspension of Attorney Rupich's license to practice law for some period of time is required in this matter. Accordingly, we turn to the relevant aggravating and mitigating factors to determine the appropriate length of suspension.

¶52 As to aggravating factors, the referee concluded that Attorney Rupich's two prior private reprimands in 2007 and 2014 were either too remote or too dissimilar to be of meaningful relevance to the present case. We agree. However, there are other relevant aggravating factors present here. Attorney Rupich exhibited a dishonest and selfish motivate by not returning some portion of the advanced flat fees paid by A.G. and M.M. upon the termination of his representation, despite failing to accomplish any of the objectives set forth in his fee agreements. *See* ABA Standards § 9.22(b). This case also involves multiple offenses and a pattern of misconduct. *Id.*, § 9.22(c)-(d). Finally, Attorney Rupich has substantial experience in the practice of law. *Id.*, § 9.22(i).

¶53 As to mitigating factors, we accept the OLR's representation that shortly after the referee issued her report, Attorney Rupich refunded A.G. and M.M. the entirety of the advanced flat fees they paid to him, thus showing a good faith effort to make restitution. *See* ABA Standards § 9.32(d).[23] The referee also considered as mitigating factors that Attorney Rupich admitted all counts of misconduct alleged in the complaint and provided "forthright, honest testimony during the evidentiary hearing[.]" We agree. *See id.*, § 9.32(e) (mitigating factors include "cooperative attitude toward [the disciplinary] proceedings"). Although Attorney Rupich raised as an affirmative defense that he was suffering from a health condition during the relevant time frame, the referee appropriately did not consider this to be a mitigating factor because Attorney Rupich failed to present any medical evidence linking his condition to the charged misconduct. *In re Disciplinary Proceedings Against Sosnay*, 209 Wis. 2d 241, 243, 562 N.W.2d 137 (1997) ("Absent a causal connection between an attorney's medical condition and that attorney's professional misconduct, the medical condition may not be considered a factor mitigating either the seriousness of the misconduct or the severity of discipline to be imposed for it.").

[23] We note that the referee's recommendation for a 60-day suspension was based, in part, on the referee's "accompanying recommendation for full restitution." However, forced or compelled restitution is not a proper mitigating factor, ABA Standards § 9.4(a), and the record does not indicate any effort at making restitution prior to the disciplinary hearing. But, given that Attorney Rupich apparently did, in fact, make full restitution to A.G. and M.M. before being formally ordered to do so by this court, we consider his payment to be somewhat mitigating.

Finally, we agree with the referee that Attorney Rupich's decision to address the underlying cause of his misconduct by restructuring and cutting back his law practice to more manageable levels is evidence of his efforts to rehabilitate himself, which this court has considered as a mitigating factor in past cases. *In re Disciplinary Proceedings Against Frisch*, 2010 WI 60, ¶22, 326 Wis. 2d 128, 784 N.W.2d 670.

¶54 Given the above discussion, a 60-day suspension (*Mross*) seems inadequate here given the number of counts of misconduct and Attorney Rupich's repeated failures to advance A.G., M.M., and J.J.'s interests, while a six-month suspension (*Christnot*) seems too harsh, given the above mitigating factors. On the whole, we determine that a three-month suspension is the appropriate sanction in this case given the seriousness, nature, and extent of the misconduct, the need to protect the public, the need to deter other attorneys from similar misconduct, and the need to impress upon Attorney Rupich the seriousness of the misconduct. *In re Zenor*, 399 Wis. 2d 326, ¶10.

¶55 We next address restitution. The referee recommended that Attorney Rupich be required to pay the full amount of the advanced flat fees paid by A.G. ($3,000) and M.M. ($10,000). The referee did not specifically explain how she determined what amount of restitution was owed to either client. The OLR took the position that despite Attorney Rupich's time sheets showing that he performed significant work on both matters,[24] he did not earn any portion of the fees paid in either matter. The OLR relied on A.G. and M.M.'s testimony that they did not believe that any work performed by Attorney Rupich benefitted their cases. In response to a question from this court regarding the appropriate method of calculating the amount of fees paid by A.G. and M.M. that were unearned (i.e. the appropriate amount of restitution), the OLR did not cite any authority for the notion that a client's subjective belief as to the value of legal services performed is an appropriate metric for calculating the amount of restitution owed in cases such as this. Instead, the OLR relied on this court's recent

[24] We note that, as to A.G., the OLR's complaint specifically alleged that "[t]hrough his first few months of representing [A.G.], documentation produced by Rupich shows he worked regularly on the case, requesting discovery from prior counsel, the police, and the prosecutor; communicating status updates to [A.G.]; and negotiating with the district attorney."

decision in *In re Disciplinary Proceedings Against Scholz*, 2025 WI 13, ¶95, 415 Wis. 2d 474, 19 N.W.3d 550, where we held that "when, due to poor recordkeeping or other conduct by an attorney, the OLR is unable to discern a reasonably ascertainable amount of restitution owed, the burden shifts to the attorney to establish what offset, if any, is appropriate in determining the amount of restitution owed to a particular individual." The OLR contends that "[u]nder *Scholz*, Rupich had the burden to establish the value of any services he claimed to have provided." Further, the OLR argues: "While he claimed to have done work, he did not provide any substantive testimony as to how his services advanced the clients' interests towards their objectives or the value of the services he rendered in relation to the work that was left to be done."

¶56 As noted above, the OLR also represents that following the filing of the referee's report, Attorney Rupich paid full restitution to A.G. and M.M. Thus, the OLR argues that Attorney Rupich has conceded that the work he claimed to have performed on behalf of A.G. and M.M. did not entitle him to any offset, such that he appropriately owed the full amount of the advanced flat fees paid by those clients as restitution. Despite being afforded the opportunity to weigh-in on the matter, Attorney Rupich did not respond to the questions this court posed to the parties concerning how restitution should be calculated in this case and did not dispute the OLR's representation that he had already refunded A.G. and M.M. in full. Given the unique facts of this case, we accept the OLR's representation that Attorney Rupich fully refunded A.G. and M.M. their advanced flat-fee payments and consider that action as a concession on the part of Attorney Rupich that he was not entitled to any offset of the fees those clients paid. Accordingly, we leave for another day the question of how to properly calculate the amount of fees that remain unearned and the amount of restitution owed under a prematurely terminated flat-fee agreement.[25]

¶57 Finally, we address the issue of costs. The OLR's itemization of costs reflects a total of $11,384.17, including referee fees and expenses, as

[25] We caution the OLR that while *In re Disciplinary Proceedings Against Scholz*, 2025 WI 13, ¶95, 415 Wis. 2d 474, 19 N.W.3d 550 may relieve it of the burden of proving the precise amount of restitution owed under the circumstances described by that case, *Scholz* does not operate to relieve the OLR of the burden of proving an underlying SCR violation.

of May 8, 2025. Attorney Rupich has not objected to the OLR's statement of costs. There is no reason to depart from this court's general policy of imposing the full costs of disciplinary proceedings on the respondent attorney in this case. *See* SCR 22.24(1m); *In re Disciplinary Proceedings Against Lister*, 2015 WI 8, ¶47, 360 Wis. 2d 330, 858 N.W.2d 687.

¶58 IT IS ORDERED that the license of Attorney Patrick J. Rupich is suspended for a period of 90 days, effective the date of this order.

¶59 IT IS FURTHER ORDERED that within 60 days of the date of this order, Attorney Patrick J. Rupich shall, to the extent he has not already done so, pay to A.G. the sum of $3,000 and to M.M. the sum of $10,000, as restitution in this matter.

¶60 IT IS FURTHER ORDERED that within 60 days of the date of this order, Attorney Patrick J. Rupich shall pay to the Office of Lawyer Regulation the costs of this proceeding, which, as of May 8, 2025, total $11,384.17.

¶61 IT IS FURTHER ORDERED that, to the extent he has not already paid restitution to A.G. and M.M. as set forth above, Attorney Patrick J. Rupich shall do so before paying the costs of this proceeding.

¶62 IT IS FURTHER ORDERED that Attorney Patrick J. Rupich shall comply with the provisions of SCR 22.26 concerning the duties of a person whose license to practice law in Wisconsin has been suspended.

¶63 CHRIS TAYLOR, J., did not participate.